

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Price Cap Performance Review ) CC Docket No. 94-1  
for Local Exchange Carriers; )  
Treatment of Video Dialtone Services )  
Under Price Cap Regulation )

To: The Commission

**REPLY COMMENTS OF  
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.**

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**I. INTRODUCTION**

The National Cable Television Association, Inc. ("NCTA"), by its attorneys, hereby replies to the initial comments filed in the above-referenced proceeding.

**II. DISCUSSION**

NCTA argued in its initial comments that consideration of a separate price cap basket for video dialtone, although potentially significant, is secondary to the more fundamental question of how the Commission sets the initial price for video dialtone in the tariff proceedings. As NCTA stated, done properly, that undertaking requires that the Commission make a basic policy judgment as to what portion of the video dialtone network upgrade will be billed to local telephone subscribers.<sup>1</sup>

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<sup>1</sup> Now, however, it appears that an even more basic issue has emerged. For it has become apparent that telephone companies may be abandoning the common carrier model for video delivery altogether. Thus, while the parties to this proceeding argue over the finer points of price cap regulation, it is not

(continued...)

Assuming video dialtone proceeds and the Commission properly establishes its initial price, as NCTA and others have urged, a video dialtone basket would be essential to the enforcement of the Commission's price decision. Indeed, relatively little controversy exists on this point.

Predictably, only the telephone companies dissent from the prevailing view. They unpersuasively argue that competition and price cap regulation eliminate the incentive to cross-subsidize video dialtone and thus obviate the need for a video dialtone basket. Of course, as the Commission well knows, LECs are not subject to effective competition for most services, and the LEC price cap regime currently contains elements of rate of return regulation that create an incentive to cross subsidize.<sup>2</sup>

Nor should the Commission seriously consider BellSouth's proposal to place video dialtone in the existing trunking price cap basket. For despite BellSouth's exaggerated claims of

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<sup>1</sup>(...continued)  
unreasonable to conclude that the whole notion of a Title II video service, including of course Title II price cap regulation, might be on the verge of collapse.

<sup>2</sup> Indeed, in an affidavit attached to Bell Atlantic's pleading, Alfred E. Kahn confirms that the "LECs' price caps, in contrast, continue to incorporate a number of elements of rate of return regulation." Affidavit of Alfred E. Kahn at 8. Moreover, while under the new price cap rules the telcos may now opt out of sharing, one of the elements to which Professor Kahn refers, all telcos' prices remain subject to periodic adjustments. And as Professor Kahn observes in his affidavit, "[s]o long as the price caps continue to be tested from time to time against the rate of return they produce, as they are under the current plan applicable to the LECs, the perverse effects of cost-plus regulation on the companies' incentives will not be entirely eliminated." Id. at 9.

competition, transport services are only competitive in central districts of metropolitan areas where there is virtually no demand for video service. It is thus simply not true, as BellSouth contends, that the pressures of competition limit the opportunities for cross-subsidy within the trunking basket. Indeed, video dialtone providers would have an obvious opportunity to overcharge for transport services wherever effective competition is not present.

Aside from the arguments just described, the parties generally agree that a separate video dialtone price cap basket will help to inhibit cross-subsidy.<sup>3</sup> Moreover, most agree on the form the basket should take. First, the non-telcos generally agree that some form of pricing floor, determined after a careful review of the costs of video dialtone, is essential to inhibit cross-subsidy.<sup>4</sup> This mechanism would obviously help deter predation. Second, virtually all of the commenting parties support NCTA's view that a video dialtone price cap basket should be insulated from the sharing process.<sup>5</sup> Finally, the parties

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<sup>3</sup> See e.g., Comments of MCI at 5-7; Comments of California Cable Television Association ("CCTA") at 5-7; Comments of AT&T at 3-4; Comments of Ad Hoc Telecommunications User Committee ("Ad Hoc Committee") at 5-7; Comments of General Services Administration at 3-4.

<sup>4</sup> See generally Comments of NCTA. See Comments of Ad Hoc Committee at 6 n.6; Comments of Cox Enterprises, Inc. ("Cox") at 16-18; Comments of MCI at 10-11; Comments of CCTA at 7-10.

<sup>5</sup> See Comments of NCTA at 8-9; Comments of MCI at 12-13; Comments of Cox at 25-27; Comments of US West at 14-15; Comments of NYNEX at 9-10; Comments of CCTA 19-20; Comments of Rochester  
(continued...)

also generally agree that, given the complete absence of a performance record for video dialtone, a productivity factor is inappropriate.<sup>6</sup>

Furthermore, while NCTA did not discuss the issue in its comments, it supports the recommendation to extend for video dialtone the time period before folding a service into price cap regulation.<sup>7</sup> A longer than normal pre-price cap period would give the Commission the opportunity to accumulate a more extensive and reliable record upon which to base the final rates before price caps go into effect. Given that none of the services currently subject to price caps bears any resemblance to video dialtone, such a record would be extremely helpful.

It follows that folding video dialtone into price caps immediately upon tariff approval, as GTE recommends,<sup>8</sup> or exempting video dialtone providers from tariff filing requirements prior to application of the cap, as US West urges,<sup>9</sup> would undermine sound policy. Again, the Commission needs the time prior to capping prices to establish a record of telco

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<sup>5</sup>(...continued)  
Telephone Corp. at 9; Comments of AT&T at 5-7; Comments of the Ad Hoc Committee at 20-21.

<sup>6</sup> See Comments of NCTA at 9-11; Comments of Bell Atlantic at 6; Comments of Pacific Bell at 7-8; Comments of MCI at 9-11; Comments of Cox at 21-25; Comments of US West at 13-14; Comments of GTE at 19-20; Comments of NYNEX at 6-8.

<sup>7</sup> See Comments of Pacific Bell at 5.

<sup>8</sup> See Comments of GTE at 11.

<sup>9</sup> See Comments of US WEST at 17-18.

costing decisions that an extended tariff process would provide. Moreover, subject to a narrow exception not relevant to such an important service as video dialtone, the Commission lacks the discretion to exempt common carriers from filing tariffs.<sup>10</sup>

Finally, proposals to eliminate the Part 69 process are misguided.<sup>11</sup> The Commission's current rules require video dialtone operators to create separate accounts for the costs of video dialtone.<sup>12</sup> Those costs must be allocated, however, to the Part 69 categories. Exempting video dialtone from the Part 69 process would essentially allow telephone companies to place the costs wherever they chose. The incentive to place them in Part 69 categories where the costs could be cross-subsidized (for example, in categories that participate in sharing) is obvious.

The sounder policy would therefore be to continue to apply Part 69 to video dialtone. But as NCTA cautioned in its initial comments, a separate video dialtone price cap basket raises complex Part 69 issues that will have to be examined carefully.<sup>13</sup> The difficulty arises from the fact that the Commission may end up using different methodologies for establishing initial video

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<sup>10</sup> See 47 U.S.C. § 203(a) (every common carrier "shall" file tariffs with the Commission); MCI Telecommunications Corp. v. AT&T, 114 S.Ct. 2223 (1994) (overturning FCC decision to make tariff filing optional for nondominant long distance carriers).

<sup>11</sup> See Comments of GTE at 16-17; Comments of Rochester Telephone Corp. at 6-7.

<sup>12</sup> See FCC RAO Letter 25, DA 95-703 (released April 3, 1995).

<sup>13</sup> See NCTA Comments at 9.

dialtone prices on the one hand and for costing out video dialtone from sharing on the other.

Some parties have suggested the Commission establish a separate Part 69 category for video dialtone.<sup>14</sup> That would probably simplify matters somewhat. But the true source of the complexity is the Commission's failure to establish any coherent allocations principles for video dialtone. Until it does so, telcos will have an unusually and unnecessarily easy time misallocating the costs of this network upgrade.

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<sup>14</sup> See e.g., Comments of MCI at 13-15;

### III. CONCLUSION

For the reasons described above, NCTA respectfully requests the Commission to establish a separate price cap basket for video dialtone service with a price floor that is exempt both from sharing as well as the application of a productivity factor.

Respectfully submitted,

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April 17, 1995



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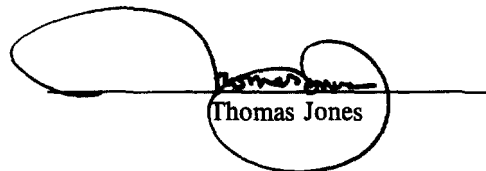
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